

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

3 IN RE: . Case No. 01-01139 (JKF)  
4 W. R. GRACE & CO., et al., . Chapter 11  
5 . Jointly Administered  
Debtors. .  
6 . January 27, 2003 (12:25p)  
7 . Wilmington

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

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21 Proceedings recorded by electronic sound recording;  
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1                   THE COURT: W.R. Grace, 01-1139. There are a  
2 number of matters for this morning. Good morning.

3                   MS. BAER: Good morning, Your Honor. Janet Baer on  
4 behalf of the debtor. Your Honor, I believe we have a number  
5 of people on the phone. I just wanted to make sure because I  
6 knew that Mr. Westbrook and Mr. Restivo were both going to  
7 participate by telephone. I'm not sure who else is on the  
8 phone.

9                   THE COURT: Mr. Westbrook?

10                  MR. WESTBROOK (TELEPHONIC): Good morning, Your  
11 Honor. Ed Westbrook in Charleston.

12                  THE COURT: Good morning. Mr. Restivo?

13                  MR. RESTIVO (TELEPHONIC): Good morning, Your  
14 Honor. Jim Restivo in Pittsburgh.

15                  THE COURT: Mr. Esserman?

16                  MR. ESSERMAN (TELEPHONIC): Yes, good morning, Your  
17 Honor. Sandy Esserman on the phone from Dallas.

18                  THE COURT: Anyone else? Okay. Ms. Baer.

19                  MS. BAER: Your Honor, the first matter is the  
20 uncontested motion of Pitney, Hardin with respect to their  
21 special fee arrangement. Your Honor, they had had a special  
22 fee arrangement approved by the Court. It was a contingent  
23 fee arrangement. The matter's been resolved. The fees are  
24 being held, and the only issue I believe before Your Honor  
25 was a final ruling approving their fees so the rest of the

1 eighty percent, the twenty percent left over on the  
2 contingency fee could be paid.

3 THE COURT: Okay.

4 MS. BAER: Your Honor, counsel for Pitney, Hardin  
5 is here.

6 THE COURT: I'm sorry, what agenda number?

7 MS. BAER: Agenda item number one, special fee  
8 application of Pitney, Hardin.

9 THE COURT: Didn't I do an order?

10 MS. BAER: Your Honor, I don't believe on this one  
11 we've seen an order or a certificate because it's a final fee  
12 application.

13 THE COURT: I guess I didn't. I thought I had.  
14 Okay. No, I didn't -- Good morning.

15 MR. ZUBER: Good afternoon, Your Honor. Scott  
16 Zuber from Pitney, Hardin, Kipp & Szuch. Your Honor, I think  
17 what happened is we had filed a notice for the interim  
18 distribution, a special fee application, December 2001, and  
19 pursuant to the negative notice procedures we were authorized  
20 based upon no objection and the appropriate time period and  
21 notice it goes down eighty percent of the \$240,000  
22 contingency and that after some discussions with the fee  
23 ordered later on it was determined that we should have a  
24 final fee application hearing to (1) approve the eighty  
25 percent we already drew down as well as to approve the twenty

1 percent holdback. And that's what this is today, Your Honor.  
2 I can give the Court some background if you'd like.

3 THE COURT: I don't think I need it at this point.  
4 As I said, I thought I entered the order but I think I didn't  
5 get a certificate of no objection and that's the reason that  
6 I didn't. I'm not aware of any objections; have any been  
7 filed?

8 MR. ZUBER: I'm not aware of any, Your Honor.

9 THE COURT: Does anybody have any objection? Okay.  
10 Do I have an order?

11 MR. ZUBER: I did not submit one, Your Honor, but  
12 I'd be happy to do so.

13 THE COURT: I think my Web Procedures require an  
14 order when you're filing applications. I realize this may be  
15 a final for you, but nonetheless, please submit an order.

16 MR. ZUBER: Yes, Your Honor. Actually the papers,  
17 I think, were filed by Pachulski, Stang so I'm not sure  
18 whether an order was filed at that time.

19 THE COURT: Well, I don't have one here, so I don't  
20 know. Do you have one? Okay. When I get it from -- I guess  
21 attached to a CNO would be the best way to do it at this  
22 point in time.

23 MR. ZUBER: Thank you, Your Honor.

24 THE COURT: It will be entered. Thank you.

25 MR. ZUBER: Your Honor, may I be excused?

1 THE COURT: Yes, sir. Thank you.

2 MS. BAER: Thank you, Your Honor. Delaware counsel  
3 will submit an order with a CNO.

4 THE COURT: Okay.

5 MS. BAER: We'll take care of that. Your Honor,  
6 agenda item number 2 is PricewaterhouseCoopers' application  
7 for a limited waiver of the local rule requirements. A CNO  
8 was filed on this on the 23rd so I don't believe Your Honor's  
9 had the opportunity to enter an order.

10 THE COURT: I haven't seen it yet. Okay.

11 MS. BAER: Your Honor, I understand from  
12 Pricewaterhouse it was filed. I do not have a copy myself.

13 THE COURT: All right. Good morning.

14 MS. SELLIS: Good morning, Your Honor. Debra  
15 Sellis on behalf of PricewaterhouseCoopers. Your Honor, we  
16 did submit a certificate of no objection on January 23rd.  
17 There was an order submitted with the original motion which  
18 was filed in November. So, the order is attached to the  
19 motion. If Your Honor would like, I can hand one up now.

20 THE COURT: I think I have it.

21 MS. SELLIS: Okay.

22 THE COURT: Let me double check.

23 MS. SELLIS: If Your Honor has any questions, my  
24 co-counsel is here to address them.

25 THE COURT: No, I don't have any questions. I take

1 it at this point no one has any objection?

2 MS. SELLIS: That's my understanding, Your Honor.

3 THE COURT: Okay. That order is entered.

4 MS. SELLIS: Thank you.

5 THE COURT: Okay?

6 MS. BAER: Your Honor, agenda item number 3 is the  
7 motion of the debtor for an order approving the settlement  
8 with MCNIC Pipeline. A CNO was presented along with an  
9 order, and I understand that there was an issue about whether  
10 it should be filed in the adversary proceeding or in the  
11 bankruptcy proceeding, and Delaware counsel had cleared that  
12 up with your office last week. So at this point, we're just  
13 waiting for entry of the order.

14 THE COURT: This is the order -- The order I have  
15 here is the order that was submitted with the stipulation.  
16 Was there a changed one?

17 MS. BAER: No, Your Honor.

18 THE COURT: Okay. That order is entered.

19 MS. BAER: Thank you, Your Honor.

20 THE COURT: Okay.

21 MS. BAER: Agenda item number 4 was the debtors'  
22 application to employ special counsel, Woodcock and Washburn.  
23 Your Honor did enter an order on that one last week. Your  
24 Honor, agenda item number 5 --

25 THE COURT: Wait. Pardon me -- Oh, yes, I'm sorry.

1 Go ahead.

2 MS. BAER: Agenda item number 5 is the debtors'  
3 motion for entry of an order pursuant to Sections 363 and 365  
4 of the Code with respect to a prime lease. Your Honor also  
5 entered an order on that one last week.

6 THE COURT: Yes, I did.

7 MS. BAER: Your Honor, that brings us to contested  
8 matter number 6, motion of Caterpillar Financial Services to  
9 compel payment on some leases. Your Honor, the parties have  
10 been negotiating on this one. It's an invoicing problem that  
11 Caterpillar is still trying to clear up. The matter is to be  
12 continued until the 24th of February, our next omnibus  
13 hearing. We hope by that time we will have a stipulated  
14 order to present to the Court.

15 THE COURT: All right, it's continued.

16 MS. BAER: Your Honor, that brings us to agenda  
17 item number 7, which is the debtors' motion to further extend  
18 the preliminary injunction with respect to the Locke vs.  
19 Patachi (phonetical) matter. Your Honor, this is a matter  
20 which has some history to it. As you will recall on January  
21 22nd, 2002, you entered a modified preliminary injunction  
22 which among other things enjoined actions against current or  
23 former employees, officers, and directors that arise out of  
24 their employment with the debtor. The Locke vs. Patachi  
25 matter is an employment discrimination matter brought by Mr.

1 Locke against both W.R. Grace and Robert Patachi. Mr.  
2 Patachi is an executive vice-president of Grace and Grace  
3 Conn. He's also the president of Grace Performance  
4 Chemicals, one of Grace's two main divisions. Your Honor, at  
5 the time you entered the January 22nd injunction, the Locke  
6 vs. Patachi matter was carved out because you had asked for  
7 additional information to be submitted. The additional  
8 information was submitted. The matter was further argued and  
9 on the record you determined that the preliminary injunction  
10 should extend to Mr. Locke. An order was submitted which was  
11 an agreed order with Mr. Locke's counsel that extended the  
12 preliminary injunction as to that matter until the end of  
13 last year. At the December omnibus hearing, it was extended  
14 to this hearing by stipulation of the parties. Your Honor,  
15 the debtor is moving to further extend the preliminary  
16 injunction as to this matter. Essentially it's the same as  
17 all of the many other motions that have been filed to modify  
18 the injunction to lift the stay. It is an action against a  
19 third party as well as Grace, but it is truly an action that  
20 is against Grace. This is an employment discrimination  
21 matter. Mr. Patachi was acting as an employee, as a director  
22 and officer of Grace. There is an absolute indemnity. Grace  
23 has been defending the action, has been paying for the  
24 defense until the injunction was entered. The facts have not  
25 changed. It is still vital that this matter be enjoined

1 along with all of the other matters that have been enjoined  
2 with respect to the preliminary injunction until we are at  
3 the point where we can determine how we are going to handle  
4 all non-asbestos claims. Your Honor has entered a bar date.  
5 The bar date is March 31st, 2003. As you indicated on  
6 January 29th of last year when you extended the injunction to  
7 this matter, Mr. Locke is not in any different circumstance  
8 and position from any of the others involved in these third-  
9 party type actions, as well as actions against Grace. His  
10 remedy is to file a proof of claim, and through the proof of  
11 claim process Grace will address his claim. It has not been  
12 determined at this point what will be the exact way to  
13 address non-asbestos claims. It has not been determined  
14 whether or not this action will ultimately be tried where it  
15 is, will be tried by this Court, or will be resolved through  
16 the claims objection process some other way. We're not there  
17 yet, Your Honor. We're moving in the right direction. We've  
18 made a tremendous amount of progress in the case, but as you  
19 know well, better than anybody, we have some tremendous  
20 hurdles to overcome before we can put together a  
21 comprehensive reorganization plan and really before we can  
22 put together a comprehensive, workable way to approach the  
23 different types of claims. Your Honor, the elements of a  
24 preliminary injunction that justify the injunction in the  
25 first place still very much remain. If this action would

1 proceed against Mr. Patachi there would be a very large risk  
2 of an adverse impact on the debtor in a couple of ways.  
3 Number one, monetarily. The debtor has an absolute  
4 obligation to indemnify Mr. Patachi to pay for his defense.  
5 Secondly, Your Honor, Mr. Patachi himself is a key employee  
6 and officer of Grace. As the president of Grace Performance  
7 Chemicals, he is one of the primary people that is necessary  
8 for an effective reorganization of an effective business.  
9 Grace Performance Chemicals is a significant portion of the  
10 debtors' business. It represents over half of the debtors'  
11 sales and over forty percent of the debtors' operating  
12 profits which Your Honor last year neighbored \$100,000,000.  
13 Mr. Patachi is key to having this company be a viable company  
14 to reorganize and key in putting together a plan that will  
15 give creditors opportunities to get paid by a company that is  
16 vitally operating and producing the operating profits  
17 necessary to pay claims. Your Honor, with respect to the  
18 likelihood of success on the merits, Grace is moving along in  
19 a very orderly fashion as promptly as it can to put together  
20 a plan of reorganization. One of the huge hurdles, the  
21 fraudulent conveyance matter is essentially behind us now.  
22 The ZAI trial and litigation matter has a discovery schedule,  
23 it's progressing, and we have a bar date. We have a bar date  
24 for non-asbestos claims. We have a bar date for asbestos  
25 property damage claims and medical monitoring claims which

1 expires March 31st, 2003. The vital steps that we need to  
2 move this plan forward are happening, but they're not quite  
3 all there yet. With respect to balance of harms, Your Honor,  
4 although certainly Mr. Locke has a right to have his day in  
5 court or to submit his claim and have his claim dealt with by  
6 the debtor, it is one of many in a similar circumstance that  
7 all need to be addressed in an orderly fashion so that Grace  
8 can put together a Chapter 11 plan and complete and have all  
9 of the time and attention devoted to putting together that  
10 Chapter 11 plan. At the end of the day, an orderly way to  
11 address these claims is certainly to the benefit of all  
12 creditors of this estate. And finally, Your Honor, we  
13 believe that with respect to the public interest element of a  
14 preliminary injunction again the public interest would favor  
15 Grace moving forward in an orderly fashion with its key  
16 employees and officers to put together a plan of  
17 reorganization and not have to be diverted at this time with  
18 respect to litigation against third parties, its officers,  
19 its directors. Your Honor, we ask that the preliminary  
20 injunction with respect to the Locke vs. Patachi matter be  
21 continued and put on the same schedule as the preliminary  
22 injunction in general to be taken up at a time on further  
23 order of the Court.

24 THE COURT: All right. Good afternoon.

25 MS. MILLER: Good afternoon, Your Honor. Kathleen

1 Miller on behalf of Mr. Locke. Your Honor, just very  
2 briefly, the Massachusetts litigation background or I should  
3 say status, there is a pending motion for summary judgment  
4 filed by the defendants. The deposition for Mr. Patachi was  
5 already deposed. Discovery has been produced except for one  
6 party that we had been, we believe, is prepared and just  
7 needs to be produced. As far as the indemnity, we still  
8 stand that it is not an absolute indemnity, and that's what  
9 the debtor argues through its papers and stands. This is  
10 absolutely an indemnity. This is not an absolute indemnity  
11 case. We discussed this before that, you know, there are  
12 certain preconditions for the indemnity to ultimately -- Mr.  
13 Patachi may be ultimately entitled to it, but it's not an  
14 absolute indemnity, and Mr. Patachi under Massachusetts law  
15 is individually liable on this claim. It's not purely a  
16 respondent superior type claim, and if Mr. Patachi is found  
17 to have discriminated against Mr. Locke, certainly it's  
18 questionable, a serious question of whether or not Mr.  
19 Patachi acted in good faith investitures of the company which  
20 is one of the standards for indemnification under Delaware  
21 General Corporation Law. He'll have his -- Mr. Patachi can  
22 have his claim -- his pre-petition claim for indemnification  
23 if that's the case. And the argument that Mr. Locke will be  
24 -- his claim will be remedied by a proof of claim, we don't  
25 think that is the appropriate remedy. He may have a claim --

1 obviously he does. He served a claim against Grace. Against  
2 Mr. Patachi, he's individually liable under a specific  
3 Massachusetts statute. To say that a proof of claim takes  
4 care of that when Mr. Locke may get paid whatever percent on  
5 the dollar as opposed to recover from Mr. Patachi  
6 individually dollar for dollar, you're in effect releasing  
7 the non-debtor claim, which this jurisdiction is very careful  
8 about. You have to have -- It's an unusual circumstance to  
9 release that kind of claim, and what the debtor in essence is  
10 by saying the proof of claim is the appropriate response is  
11 saying, Well, you know, basically decide that release issue  
12 now. Don't worry about the Patachi claim. He has a proof --  
13 Mr. Locke has a proof of claim to file.

14 THE COURT: What's the status of the summary  
15 judgment proceedings? I'm sorry, who filed the --

16 MS. MILLER: The defendants filed in January 2002.  
17 They filed their brief. Mr. Locke was waiting for some  
18 discovery, written discovery responses from the defendants.  
19 Even post-petition, the Massachusetts court ordered Mr.  
20 Patachi to produce that, and he did not do that even before  
21 this Court entered the injunction. Once we get that, the  
22 parties had agreed to a reasonable time for us to file our  
23 brief. They'll file a reply and have it argued. If they  
24 win, it's over. If they don't then the case would have to be  
25 tried, and the papers filed by the debtor don't substantiate

1 how that process would pull Mr. Patachi away from his vital  
2 work at the debtor. It wouldn't necessarily be involved in  
3 that process, the written process. The trial, it may be a  
4 day. It's not a substantial amount of time as their  
5 affidavit says. There's no support for that. So at a  
6 minimum, we think that the summary judgment process should be  
7 allowed to proceed. Your Honor, we're almost coming up on  
8 two years in this case. Even the American Film case that the  
9 debtors relied in their papers by this Court, that case had  
10 been pending for a year and the Court noted it's a  
11 preliminary injunction. It's not a permanent injunction, and  
12 the Court noted that in that case, and it's getting to be  
13 about time that you deal with this issue. We're two years,  
14 almost, into this case. They had the science trial if it  
15 doesn't get resolved apparently here in the summer scheduled  
16 -- I don't know if it's scheduled yet or not but they're  
17 hopeful it will be scheduled in 2003. I don't follow that  
18 issue closely but apparently it's a big issue, and I assume  
19 that, you know, there will be appeals and who knows how long  
20 that process could take. And what the debtors are asking  
21 about in this motion is basically a permanent injunction  
22 until we get to a plan, whenever we get to a plan. There's  
23 no -- Not that there's no end in sight but it's not close in  
24 sight, and Mr. Locke is still sitting here with a claim  
25 against a non-debtor party being enjoined improperly.

1 THE COURT: Ms. Baer?

2 MS. BAER: Your Honor, just briefly. With respect  
3 to the pending summary judgment motion, there is discovery  
4 that Grace and Patachi would have to do. It is not completed  
5 and would have to be completed before the summary judgment  
6 discovery was closed. At that point in time a response would  
7 be filed and then Grace would have to prepare a reply. As  
8 was pointed out, this is not just an action against Grace.  
9 It's also an action against Mr. Patachi individually which  
10 is, you can imagine, makes Mr. Patachi extremely interested  
11 and spend perhaps more time than might otherwise be necessary  
12 or typical to be involved in this litigation process. It  
13 would take his time and his attention even to get through the  
14 summary judgment process. Your Honor, with respect to the  
15 indemnity point, there is an absolute indemnity. The  
16 language of the indemnity makes it very clear. Grace pays  
17 the fees, Grace defends the action on behalf of Mr. Patachi.  
18 Only if at the end of the day there would be the possibility  
19 that under Massachusetts law Grace would not be entitled to  
20 pay on the indemnity I believe under Delaware law would there  
21 ever become an issue, but from Grace's perspective there is  
22 an absolute indemnity. It does have to expend funds to  
23 defend Mr. Patachi. And further, Your Honor, given what  
24 happened here, this employment discrimination case, Grace is  
25 very much a party to it. There would be truly a record taint

1 fear here, the Manville and A.H. Robbins type fear if this  
2 action went forward against Mr. Patachi without Grace  
3 participating. This was not just an individual decision of  
4 Mr. Patachi's with respect to Mr. Locke's employment. This  
5 was a decision of Grace Performance Chemicals of which he is  
6 the president and a decision of Grace and likely its Board of  
7 Directors. Therefore, for this action to proceed against one  
8 without the other could ultimately prejudice the debtor  
9 greatly.

10 THE COURT: Well, I -- at some point this claim is  
11 going to have to be liquidated, and this claim can't possible  
12 be the means-all and end-all of this case. It just can't be.  
13 I mean the debtor didn't file a bankruptcy to avoid a single  
14 question of employment discrimination. So although I  
15 appreciate the fact that the debtor needs Mr. Patachi's  
16 services, probably even post-confirmation you're going to  
17 need Mr. Patachi's services, nonetheless, this claim is going  
18 to have to be adjudicated, and quite frankly, it's a whole  
19 lot different from the asbestos litigations ongoing, and two  
20 years into this with a stay in place for that length of time  
21 is getting to be to the point where preliminary is getting a  
22 little longer than preliminary really means. So, tell me  
23 what the debtors' expectation is, how long do you need a  
24 stay? Don't tell me for five years because you're not going  
25 to get it. Give me a date on which this stay will terminate,

1 and I will keep it in place until that date, but I want to  
2 know what's a reasonable period for the debtor to get  
3 prepared for the ZAI litigation, to do whatever it's going to  
4 have to do in-house to be able to get the appropriate parties  
5 lined up to finish the discovery that's necessary and at  
6 least to get through the summary judgment process. I think  
7 it's appropriate at that point to let this go forward. I'm  
8 not sure about trial and liquidation of the claim against the  
9 estate, but I really don't think this can go on forever. So,  
10 give me a date. Do you want an opportunity to confer with  
11 counsel and try to submit an agreed order?

12 MS. MILLER: Your Honor, that would be fine. An  
13 alternative suggestion would be we know that the bar date  
14 expires March 31st, 2003. At that point in time, Grace will  
15 have the universe of non-asbestos claims. Prior to this  
16 Chapter 11 case filing we had a litigation book. We knew we  
17 had a lot of non-asbestos litigation. Once the bar date  
18 passes and we're able to access where things are we will  
19 really know what the universe is. One suggestion, Your  
20 Honor, I would have is that the matter be continued say till  
21 the May hearing when we have a better sense of what is out  
22 there and then we can present Your Honor with a plan as to  
23 non-asbestos litigation, how we would suggest approaching it.  
24 This is not the only significant non-asbestos matter. It's  
25 certainly not the be-all and end-all, but, Your Honor, there

1 are a lot of other cases that would fit into this same  
2 category and to be --

3 THE COURT: All right.

4 MS. MILLER: -- off doing different things in  
5 different timings just doesn't make sense.

6 THE COURT: Okay. I can't see that pushing this  
7 till May for a further status report that will see how the  
8 debtor plans to reconcile all of these claims if the debtor  
9 has a plan will hurt, but in May, I don't expect you to come  
10 back with another request for an indefinite extension. I  
11 want a time frame at that point within which this action, I'm  
12 not asking about all of them, I'm asking about this one, is  
13 going to be adjudicated either in this Court or elsewhere,  
14 wherever you're going to do it, I'm going to get it finished.  
15 So this motion will be continued till May 19th. What's your  
16 time? Is it at noon?

17 MS. MILLER: Yes, it is, Your Honor, it's noon.

18 THE COURT: So agenda number 7 is continued to May  
19 19 at noon to see if the parties have agreed on a schedule  
20 for resolving either the motion is pending or the claim  
21 overall, whatever it is that you've agreed to, but that's  
22 what I want to know, if you've come to some agreement, and if  
23 not, then I expect to do some sort of a scheduling order  
24 myself that day.

25 MS. MILLER: Thank you, Your Honor.

1 THE COURT: Okay.

2 MS. BAER: Your Honor, agenda item number 8 was put  
3 on the agenda at your request two omnibus ago, and that was  
4 I believe in a necessity of rescheduling the June omnibus  
5 hearing.

6 THE COURT: Oh, yes. I think, however, that I was  
7 able to resolve this. Mona, I need -- Oh, maybe she gave  
8 them to me. Let's see if I have June's schedule. No. No, I  
9 have it -- Okay. It looks like Tuesday, June 17th at noon.  
10 I'm not sure currently what time this case was scheduled for  
11 or what day. It might have been Thursday. I had to move my  
12 Thursday matters to Monday so you may already have been on  
13 that day, June 17 at noon? Tuesday?

14 MS. BAER: I don't know for sure, but we are  
15 scheduled regularly on that date at noon.

16 THE COURT: Yes. No, this looks to be Tuesday at  
17 noon because on Monday of that week I have Peregrin set. So  
18 the new omnibus date for June would be Tuesday, June the 17th  
19 at noon.

20 MS. BAER: Thank you, Your Honor.

21 THE COURT: Okay.

22 MS. BAER: Your Honor, agenda item number 9 is the  
23 status of the ZAI litigation. I know that Mr. Westbrook  
24 submitted a letter to Your Honor on January 23rd that gave  
25 you a general status, and Mr. Westbrook and Mr. Restivo are

1 on the phone to address the status further.

2 THE COURT: All right, Mr. Westbrook.

3 MR. WESTBROOK (TELEPHONIC): Good afternoon, Your  
4 Honor.

5 THE COURT: Good afternoon.

6 MR. WESTBROOK (TELEPHONIC): Your Honor, we  
7 conferred with counsel for Grace last week and the letter  
8 dated June 23rd, 2003 that you received is a result of our  
9 joint conference presenting to you the status of the matter.  
10 As the Court will see we are proceeding through the fact  
11 discovery. We have informed Grace of our intention to take a  
12 number of depositions. A number of those are scheduled. I  
13 think two are scheduled the 3rd. They are lining up and  
14 we're discussing three others right now. Grace has indicated  
15 they wish to take some fact depositions as well during the  
16 month of February, which ends up our fact discovery. We have  
17 had a number of issues on document production which  
18 thankfully we have been able to work out including a number  
19 of items on privileged documents. I think we're down from  
20 the entire list of privileged documents and some that we had  
21 challenged are down to two or three documents that we're  
22 still discussing with Grace and if we can't make those go  
23 away we may have to present those to the Court. Then we are  
24 generally -- We have been at it on both sides of this for  
25 these two firms over a decade, Your Honor. We are making our

1 best efforts to move the matter along expeditiously and  
2 without having to bother the Court with too many matters that  
3 lawyers should be able to resolve between themselves.

4 THE COURT: Okay. I'm not sure where in your  
5 discovery process -- I understand that you have a couple of  
6 depositions and things are still going on, but where are you  
7 with respect to talking about whether you can come up with an  
8 agreed upon resolution through either your own consensual  
9 efforts or through some mediation or is that simply not going  
10 to work based on the nature of this suit.

11 MR. WESTBROOK (TELEPHONIC): Oh, Your Honor, it was  
12 -- I would never say it's not going to work. We are ending  
13 fact discovery in February. The expert reports are due, our  
14 expert reports from the GAI claimant side are due in March,  
15 the debtors' reports in April, and I think after we have  
16 those reports and counsel for Grace can correct me, that we  
17 probably would be in a position to have some discussions  
18 along those lines at least to see if there was anything that  
19 we could attempt to try to focus on, but my sense is, at  
20 least from having dealt with Grace in the past, that until we  
21 get the fact discovery out of the way and the expert reports  
22 on both sides laid out that we might not be able to have very  
23 fruitful discussions at all. Jim?

24 MR. RESTIVO (TELEPHONIC): Your Honor, Jim Restivo  
25 for Grace. I agree with what Mr. Westbrook has said. I

1 think it would be necessary to get the experts' reports and  
2 to review them on each side. In the many years of litigation  
3 between Grace, Mr. Westbrook's firm or firms, some cases have  
4 been tried to very -- to judgment. Some cases have settled,  
5 and so I think after the experts give the parties their  
6 respective opinions there can be some discussion about the  
7 possibility of settlement, and given past history, we know  
8 that the parties in an appropriate case do know how to  
9 settle. We also know the parties know how to go to trial,  
10 but I do agree with Mr. Westbrook that until the experts  
11 opine and we get a chance to look at that any discussions  
12 right now would be premature.

13 THE COURT: All right. I guess I'd like this put  
14 back on the agenda then for -- I'm not sure which, April or  
15 May? Which is better? Because we can discuss where you are  
16 and how much progress you've made, I suppose May.

17 MR. WESTBROOK (TELEPHONIC): I think May would be  
18 -- Ed Westbrook, Your Honor, I think May probably would be  
19 right.

20 MR. RESTIVO (TELEPHONIC): We would agree with  
21 that, Your Honor. I think the May omnibus is May 19 unless  
22 that's been changed.

23 THE COURT: No, I think that's the correct date.

24 MR. WESTBROOK (TELEPHONIC): And I think that would  
25 be a good time to bring this back up on the agenda.

1                   THE COURT: Okay. That's fine. I'll just ask  
2 counsel, please, to put it back on for that date. Okay.  
3 Anything else in Grace today?

4                   MS. BAER: Your Honor, we have one housekeeping  
5 matter with respect to the Carol Girard (phonetical) matter.  
6 As you will recall in June the Carol Girard matter came up  
7 before Your Honor with respect to a motion for  
8 reconsideration having to do with the preliminary injunction  
9 and the effect on Maryland Casualty Company. Your Honor  
10 entered an order denying the motion for reconsideration.  
11 Carol Girard at that time or shortly thereafter filed a  
12 motion with respect to the Maryland Casualty Company asking  
13 for a bond to be posted. Your Honor heard arguments on that  
14 in September and again in November, and in November indicated  
15 from the bench that you would be entering an order denying  
16 the motion with respect to the bond. The order that was  
17 actually entered by the Court was another order denying the  
18 motion for reconsideration of the merits. It was not an  
19 order denying the motion for request of bond, and so we would  
20 like to submit an order to Your Honor that has been agreed to  
21 by the parties that denies the motion requesting the  
22 submission of the bond.

23                   THE COURT: Okay. I'll take it. Did I get the  
24 correct order from somebody? Because I think when I saw that  
25 order, it's awhile ago now, but I looked at it and thought,

1 Gee, I thought I signed this --

2 MS. BAER: You did, Your Honor.

3 THE COURT: -- and I signed it again. Okay.

4 MS. BAER: Yeah, you did, Your Honor, and we -- I  
5 don't know what happened with respect to what you got but we  
6 were going to clear this up last month, and then the hearing  
7 was canceled so we do have the order now to submit to you.

8 THE COURT: All right. Okay. That order is  
9 signed.

10 MS. BAER: Thank you, Your Honor. That completes  
11 the matters on our agenda.

12 THE COURT: Anyone else have any matters? Okay.  
13 Thank you.

14 MS. BAER: Thank you, Your Honor.

15 UNIDENTIFIED SPEAKER (TELEPHONIC): Thank you, Your  
16 Honor.

17 (Whereupon at 1 p.m. the hearing on this matter was  
18 concluded for this date.)

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1 I, Elaine M. Ryan, approved transcriber for the  
2 United States Courts, certify that the foregoing is a correct  
3 transcript from the electronic sound recording of the  
4 proceedings in the above-entitled matter.

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